DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. NOELLE V. MATHIS Respondent	Case Nos.: I-00-20413 I-00-20319

FINAL ORDER

I. Introduction

On November 5, 2001, the Government served a Notice of Infraction upon Respondent Noelle V. Mathis, alleging that she violated 21 DCMR 700.3 by failing to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on November 2, 2001 at 1709 Capitol Avenue, N.E., and sought a fine of $1,000.

Respondent did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on December 6, 2001, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of $1,000 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The order also required the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction on December 12, 2001. Respondent also did not answer that Notice within 20 days of service. Accordingly, on January 17, 2002, a Final Notice of Default was issued, finding Respondent in default on the second

Notice of Infraction and subject to a total statutory penalty of $2,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). The Final Notice of Default also set February 13, 2002 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

On February 13, the Government, represented by Gerard Brown, the inspector who issued the Notices of Infraction, appeared for the hearing. There was no appearance for the Respondent. At the hearing, it became apparent that there were questions concerning whether the Government's mailing of the Notices of Infraction to Respondent at the address of the property in question –1709 Capitol Avenue, N.E. – had satisfied the requirements of the Civil Infractions Act, D.C. Official Code § 2-1802.01(a), which requires the Government to serve a Notice of Infraction "by first class mail to the respondent's last known home or business address," or the requirements of the Due Process Clause, which requires "[n]otice by mail or other means at least as certain to ensure actual notice . . . ." *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983). Those questions arose because both the December 6, 2001 and January 17, 2001 orders of this administrative court, which were mailed to Respondent at the service address supplied by the Government, were returned by the Postal Service marked "AUK" (addressee unknown). Because similar fact patterns concerning service were present in eight other default cases, I issued a joint order requiring the Government show to cause why each of the cases, including this one, should not be dismissed due to lack of proper service. *District of Columbia v. Gardner,* OAH No. I-00-20338 (Order to Show Cause, June 20, 2002).

With respect to this case, the Government's response stated that it had discovered a possible alternate address for Respondent Noelle V. Mathis. I then set the case for oral argument

on August 16, 2002 to afford the Government and Respondent an opportunity to address whether service upon her was proper at the Capitol Avenue address.

The Government appeared at the August 16 hearing, but Respondent did not. The Government argued that the evidence was sufficient to establish that 1709 Capitol Avenue is a proper mailing address for Respondent. It relied upon D.C. Official Code § 42-405(a), which provides:

> All parties with an interest in a particular real property . . . shall notify the Recorder of Deeds in writing in the event of a name change or address change. . . . A person to whom an interest in a particular real property has been transferred shall provide their [*sic*] full name and address when recording the interest.

The Government argued that Ms. Mathis had supplied 1709 Capitol Avenue as her mailing address when she purchased the property and, contrary to § 42-405(a), did not notify the Recorder of Deeds of any change in her address. The Government contended that it was entitled to rely upon an address previously furnished by a property owner as her "last known address."

At the hearing, I questioned the Government's evidentiary support for its assertion that Respondent had informed the Government that 1709 Capitol Avenue, N.E., was her last known address, and counsel responded that the information was obtained from the Recorder of Deeds website. An examination of the contents of that website, however, reveals a deed showing that Noelle V. Mathis purchased the property in 1999, and that the deed was recorded by Express Title Company of Rockville, Maryland. The deed provides no evidence that 1709 Capitol Avenue is Ms. Mathis' last known home or business address.

The Government argues that "there are no records which indicate that the Noelle Mathis who owns the property in question has a mailing address which is different than the property

address." Response to Order regarding Access to Recorder of Deeds Information at 2. On the contrary, the Property Detail sheet from which the Government originally obtained the service address identifies the property as "non-owner occupied," Petitioner's Exhibit ("PX") 102, and the Government itself has admitted in prior filings that it believes it has obtained an alternate address.[1] In any event, the Government bears the burden of proof in this case. D.C. Official Code § 2-509(b). Therefore, it must provide some affirmative evidence to support its contention that it used a proper address for service. It has not done so and, in particular, has provided no evidence of the source of the address information on the Property Detail sheet.

In the circumstances of this case, the Government may not rely upon D.C. Official Code § 42-405(a) to satisfy its burden of proving proper service. There is no evidence in the record that Respondent ever notified the Recorder of Deeds of her address pursuant to § 42-405(a) when the deed to the property was recorded.[2] A property owner's failure to make the initial notification required by § 42-405(a), however, does not necessarily mean that the Government knows a property owner's address. On the contrary, it may mean the opposite, *i.e.,* that the Government does *not* know that address. Because the Civil Infractions Act requires the

[1] Another document contained on the Recorder of Deeds' website is a notice of foreclosure sale recorded on September 24, 2002 by a lender, which states that Respondent's last known address is 4410 Oglethorpe Street, #711, Hyattsville, Maryland, the alternate address for Respondent that the Government has located. Because the foreclosure notice was recorded after the service date of the Notices of Infraction, I do not decide whether the information in that notice, which is a matter of public record, would be relevant in determining Respondent's last known address for service purposes.

[2] It conceivably could be argued that Respondent had no obligation to inform the Recorder of Deeds of her address when she purchased the property because § 42-405(a) imposes an initial notification obligation upon a person who obtains an interest in property "when recording that interest," and a title company, not Respondent, recorded the deed. Because there is no evidence of the relationship between the title company and Respondent, and because the service issue can be decided on other grounds, I do not decide whether, or in what circumstances, § 42-405(a) requires an initial address notification from a party who obtains an interest in real property but does not record that interest.

Government to mail a Notice of Infraction to a Respondent's "last *known* home or business address," D.C. Official Code § 2-1802.05 (emphasis added), a property owner's failure to provide an initial notice, by itself, is insufficient evidence upon which to base a finding that the property's address is a valid service address.

To be sure, once a property owner provides an address pursuant to § 42-405(a), that address may serve as the owner's last known address for service purposes until the owner files a notice that his or her address has changed. *DOH v. Maxwell Apartment Co.,* OAH No. I-02-72127 at 9 (Final Order, December 12, 2002); *DOH v. Lujan,* OAH No I-02-72145 at 8 (Final Order, January 8, 2003). But in this case, the Government has failed to provide any evidence that it ever had a basis for knowing that 1709 Capitol Avenue was Respondent's mailing address. Accordingly, it has not established that it served Respondent at her last known address, and the Notices of Infraction must be dismissed without prejudice.

Accordingly, it is, this _____ day of _____, 2003:

ORDERED, that the Notices of Infraction are **DISMISSED WITHOUT PREJUDICE.**

/f/ 01/15/03

_____

John P. Dean
Administrative Judge